WORKERS' COMPENSATION ADVISORY COUNCIL
MINUTES ~~ AUGUST 27, 1998 MEETING [1:00 P.M.]
710 JAMES ROBERTSON PARKWAY
HEARING ROOM, FIRST FLOOR
ANDREW JOHNSON TOWER
NASHVILLE, TENNESSEE

The meeting was called to order by Mr. Dale Sims, Designee of Chair Steve Adams

Voting members in attendance:
- Mr. Carter H. Witt
- Mr. Bob Pitts
- Mr. Jim Neeley
- Mr. Othal Smith, Jr.
- Mr. Jack Gatlin

Nonvoting members in attendance:
- Mr. Jerry Mayo
- Ms. Jacqueline B. Dixon
- Mr. Tony Farmer

Ex officio members in attendance:
- Mr. Douglas Sizemore, Commissioner of Commerce & Insurance
- Senator Bud Gilbert

Also present:
- M. Linda Hughes, Executive Director
- David Wilstermann, Statistical Analyst

The meeting was called to order by Mr. Dale Sims, Treasurer's Designee. The minutes of the July 9, 1998 minutes were unanimously approved without objection.

NEW BUSINESS

1. Presentation of NCCI re: Loss Cost Filing

Ms. Terri Robinson, Director of Government, Consumer and Industry Affairs for NCCI, was recognized by Mr. Sims. She expressed her appreciation for the opportunity to address the Advisory Council and introduced Mr. Robert Blanco, Vice President and Actuary for NCCI who was responsible for the team which developed the loss cost filing for Tennessee.

Ms. Robinson first reviewed the filing process and NCCI's role as the statistical agent and designated rate service organization for Tennessee and the analytical process NCCI goes through in order to predict the amount of premium needed in the future year to cover future losses and loss adjustment expense. She then discussed the current state of the Tennessee market. From the early 90's, the overall premium in Tennessee increased gradually until its peak in 1995. By 1997, the premium had been reduced approximately 83 million dollars in a time period of 12% wage growth and statutorily increased indemnity benefits. She expects the data concerning 1998 to reflect additional premium decreases since the filing for 1998 was for a 7% decrease. The 1999 filing of a 10.3% decrease is only possible because the loss experience in Tennessee is continuing to improve in an environment of higher benefits, lower losses and higher wages. It is part of the role of NCCI to help predict what can be expected in the future and this is what Mr. Blanco and his team does in their analysis. The presentation then continued by Mr. Blanco, who explained the elements of the filing.

Mr. Blanco explained NCCI's analysis begins in March and April with the financial call data from the carriers in Tennessee. The data is then reconciled with the companies' annual statements and is finally reviewed and compared to data reported in previous years. Again this year, the data from USF&G was excluded from the filing, which represents approximately 6% of the market in Tennessee.

To make its recommendation the NCCI actuaries considered the following:

1. Years of Experience: Historical data from 1980 through 1996 indicate a steady indemnity loss ratio in the early 80's, followed by cost increases in the late 80's and early 90's, then huge cost decreases since that time. NCCI followed its consistent process of averaging the latest two years of data in the development of the filing. These two years are 1995 and 1996. It is the 1996 data which is driving the current suggested decrease in loss cost.

2. Loss Development: In this area, the NCCI could chose among three data options: (a) claims payments only; (b) paid plus case data or (c) incurred but not reported reserves. NCCI chose (b) which consists of reserves set aside for individual cases.

3. Trend:

>Indemnity Trend: NCCI's indemnity trend analysis involved consideration and review of many different elements and possible trend indications: (a) the Tennessee eight year exponential model [-5% per year]; (b) countrywide experiences [-1.6% per year]; (c) Tennessee econometric trend [-5.7%]; (d) country wide econometric trend [-2.2%]; (e) Tennessee severity and frequency [-1.5%]; and (f) current Tennessee approved indemnity factor [-2.%]. After consideration of these factors, NCCI again selected an indemnity trend factor of -2%.

>Medical Trend: NCCI also considered the following trend indications in developing their medical trend factor: (a) the Tennessee eight year exponential model [-0.4%, which is negative for the first time and is basically no trend]; (b) country wide experiences [+2.2%]; (c) Tennessee econometric [-1.5%]; (d) country wide econometric [+1.1%]; (e) Tennessee frequency and severity [+3.3%]; and (f) current Tennessee approved medical factor [+1.75%] (Last year NCCI recommended +3.0%; the Advisory Council's actuary recommended 0% and the Department of Commerce & Insurance approved +1.75%). After analysis, NCCI chose a medical trend factor for this year's filing of +1.0% because most economists indicate increasing medical costs and the existence of a potential backlash against managed care.

Combining policy years 1995 and 1996 with these trend factors results in a 11.7% decrease before considering loss adjustment expense. In other words, if NCCI was not changing the loss adjustment expense the 1999 filing would be for a decrease of 11.7%.

4. Loss Adjustment Expense: Loss adjustment expense and losses are highly correlated to each other. The filed LAE provision is a ratio of loss adjustment expense dollars divided by loss dollars. LAE is made up of the costs involved in handling and processing workers' compensation claims [example: case manager assigned to one specific claim is included in this category]

In Tennessee, there is a downward trend in losses, which is driving costs down. However, the actual number of dollars being spent is somewhat lower, but basically the same. Thus, if the number of losses is going down and the dollars spent for LAE is staying the same, then as a percentage of losses, you need more dollars to cover the costs of handling claims. (More time and money is being spent handling the smaller number of claims, and therefore, spending about the same amount of money, but this results in a higher percentage of losses.) NCCI, after analysis of the data available on loss adjustment expense, selected a loss adjustment expense of +19.1% as opposed to the current LAE of +17.2%, which results in an increase of +1.6% for loss adjustment expense.

Therefore, combining the recommended change of -11.7% for experience, trend and benefit and the +1.6% for loss adjustment expense results in a voluntary pure premium level change of -10.3%.

After a period of questions by various members of the Advisory Council, Mr. Blanco then explained how the -10.3% is distributed among the various industry groups by experience. In distributing the industry group changes to individual classifications, lower and upper caps are utilized to avoid rate shock to specific classifications. Some insureds will have an increase in their loss cost and what their insurer does with the multiplier will determine their ultimate premium. However, the highest increase possible is +18% and the lowest decrease possible is 38%. Only 17 classes are affected by these caps. In the end, NCCI makes certain the average comes out to -10.3%.

A discussion then ensued as to why the filing is to be effective on March 1, 1999 instead of January 1, 1999. Mr. Sims asked NCCI to report at the next meeting as to what the ramifications would be if the filing effective date is changed to January 1 and for the Department of Commerce and Insurance to comment as to the department's thoughts concerning changing the effective date of the filing.

2. Report of Department of Commerce & Insurance RE: Multipliers & Deviations

Mr. Benn Daley, the workers' compensation actuary for the Department of Commerce & Insurance gave each member a handout prepared by the Department and made a presentation concerning loss cost multipliers and the various deviations filed by various carriers.

Mr. Daley first explained the loss cost pays for the loss amounts and the multiplier adds in the portion for the company expenses. So, for a company with a loss cost multiplier of 1.25, this means 1.0 pays for the loss cost and the .25 pays for the expenses and commissions. A company which has filed a multiplier of 1.0 is not saying it has no expenses; it is saying its losses will be 25% better than what has been filed by NCCI.

Included in the handouts was a sample of the form required to be filed by a company which is requesting approval for a deviation from advisory prospective loss cost in excess of 20%. Mr. Witt requested an explanation of the circumstances under which a company would be denied permission to deviate from the loss cost in excess of 20%. Mr. Daley responded the Department looks at loss history, expenses, and premium discounts. In response to Mr. Smith's question of what would happen if the loss adjustment expense is recharacterized as any other expense, Mr. Daley stated in theory it should lower the loss cost and would increase the multipliers.

Mr. Daley also presented a chart showing the frequency distributions of the current multipliers on file with the Department. The chart did not include self insured pools. Mr. Mayo requested this information be provided. Mr. Daley noted the current multiplier for the assigned risk plan is +1.35%. Mr. Daley also included a list of the insurance companies which have deviations in excess of 20% from the approved loss cost. Finally, he showed a distribution of the companies which have extremely low multipliers. The department compared these to the losses paid in 1997 and although there does not seem to be a current problem with the companies having sufficient premiums to cover the losses, the department intends to monitor this area in the future to assure those companies which have extremely low premiums have sufficient money to cover their losses.

3. Discussion of Proposed Statistical Data Form

The Executive Director, Linda Hughes, reported to the Advisory Council that following the July 9 meeting at which the Department of Labor had presented to the Advisory Council a proposed data form for its review and comment, staff compiled the comments received from the various members. Additionally, Chair Steve Adams suggested a working group of interested members meet with the Department of Labor to discuss the preliminary comments. The meeting was held on August 20. At the August 20 meeting, Advisory Council staff was requested to prepare a revised data form which incorporated the formatting and substantive suggestions and agreements made during the meeting. Each Advisory Council member received a copy of the substantive comments and a copy of the revised form prepared by Advisory Council staff.

Ms. Hughes reported she had spoken with Mr. Jim Farmer, Director of Workers' Compensation, who advised the Department is not currently in a position to make a determination as to whether the Department can accept the revised form prepared by Advisory Council staff. Mr. Farmer indicated he has no objection to the data elements contained on the "revised" form, but the Department needs to know if there are any other elements needed by the Advisory Council.

Mr. Mayo inquired if the "revised" form provided to each member reflects the agreements reached at the July 20 meeting. Ms. Hughes indicated in the affirmative, except for two changes which need to be made: (1) The Department of Labor needs the identity of the next of kin in a death case, not just the type of dependent and (2) In the section in which the money paid in each case is listed, there needs to be clarification as to what is "money paid as accrued".

Mr. Mayo inquired as to whether the Advisory Council could recommend the "revised" form to the Department of Labor. Mr. Sims indicated the Advisory Council was in a posture to (1) act to make the "revised" form the Council's draft comment to the Department pending receipt of a final form from the Department or (2) make the "revised" form the Council's comments to the form.

Mr. Jim Farmer stated it was the position of the Department that no data items requested by the Advisory Council would be taken away from the form and if there were additional items requested they would be added. However, the Department would make changes to the form to add additional elements needed as a result of other comments or requirements the Department feels should be on the form. He said the intention of the Department is to include all the Advisory Council's suggested elements in the form.

Mr. Witt made a motion the Advisory Council recommend the “revised” form [revised by Council staff] be the form to be promulgated by the Department. During the discussion of the motion, Ms. Jackie Dixon raised two areas of concern. First, there should be a place on the form to indicate the amount paid to close future medicals. Mr. Neeley and Mr. Smith agreed this information should be added to the form. Second, she raised concerns that because the amount of employer attorney fees would not be certain as of the time the form was required to be filed, it would be better to allow that money to be reported in ranges. Mr. Sims requested a “total line” be added to the section of the form in which the monetary amounts are reported. Mr. Witt then withdrew his original motion.

Mr. Smith then moved the “revised” form prepared by Advisory Council staff, as amended by the suggestions made [addition of a line for the amount paid for closing future medicals, a total line, was the fee court approved or Department of Labor approved, ranges for defense attorney fees, deleting the “permanency” category from the reasons for denial of the claim], be adopted as the statistical data form. The motion passed unanimously.

Senator Gilbert raised the question as to whether the form should be sent to any groups for input. The discussion of various members was to the effect the form has been disseminated to persons/entities who have an interest in the form and that the most affected individual regarding completion of the form is the adjuster. Mr. Jim Farmer noted the only real opposition the Department received concerning the form was to the disclosure of the actual dollar amount of employer attorney fees. Once the form is finalized by the Department, it will be sent to the Joint Legislative Committee on Workers’ Compensation for comment prior to attorney general approval.

OLD BUSINESS

Mr. Sims reported the subcommittee which is working on the subrogation issue has not had an opportunity to meet and issue a report to the full Advisory Council and pending a report, this issue will be added to future agendas.

Senator Gilbert shared with the Advisory Council he had received a letter from Loren Frost concerning some of the results of the Drug Free Workplace Program, which is making history across the nation in terms of a program which is being quickly accepted by a great number employers and employees and he wanted to applaud the Department of Labor for their efforts. Mr. Frost will be serving on the President’s Commission on redrafting the Drug Free Workplace rules. Mr. Witt expressed appreciation to Senator Gilbert for his efforts in this area.

Following a motion to adjourn by Mr. Witt, which was seconded by Mr. Pitts, the meeting was adjourned at 2:20 p.m.